

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/286,874 04/06/99 GRAHAM

F ADVECS

HM22/0621

EXAMINER

GERARD H BENCEN
426 ANDERSON COURT
ORLANDO FL 32801

NGUYEN, D

ART UNIT	PAPER NUMBER
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1633

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DATE MAILED:

06/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/286,874

Applicant

Graham

Examiner

Dave Nguyen

Group Art Unit

1633



Responsive to communication(s) filed on _____.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-14 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claims 1-14 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1633

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

On 6/11/100

- I. Claims 1-4, 8, 9, 13, and 14, drawn to gene delivery composition comprising a helper dependent adenovirus vector, a kit comprising a hdAd vector and a series of helper adenoviruses of different serotypes, and a method of making a series of genetically identical adenoviral vectors, are classified in class 435, subclass 320.1, and class 435, subclass 325, and class 435, subclass 455.
- II. Claims 5-7, and 10-12, drawn to *an vivo* gene therapy for treating any and/or all diseases wherein an adenoviral vector having a capsid of different serotype is employed, are classified in class 424, subclass 93.2.

The inventions are distinct, each from the other because of the following reasons: Invention I and Invention II are related as product and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the adenoviral vector of Invention I are not limited in the processes cited in invention II and can be used for *in vitro* cell transfection assay and/or production of stocks of replication defective adenoviral particles.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their divergent subject matter, fall into different statutory classes of invention, and are separately classified and searched, it would be unduly burdensome for the examiner to search and examine for patentability of all of the claimed inventions, and thus, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently

Art Unit: 1633

named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *John LeGuyader*, may be reached at **(703) 308-0447**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 304-0196**.



Dave Nguyen

Patent Examiner

Art Unit: 1633